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CREDIT PAYMENT SERVICES, INC.

**IN THE UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

FLEMMING KRISTENSEN.

Case No. 2:12-cv-00528-APG-(PAL)

Plaintiff.

**FIRST AMENDED
STIPULATED PROTECTIVE
ORDER**

CREDIT PAYMENT SERVICES, INC., et al.

Defendants.

The Parties, through their respective counsel of record, hereby stipulate to entry of the following proposed First Amended Protective Order:

1. PURPOSES AND LIMITATIONS

Disclosures and discovery activity in this action may involve the production of confidential, proprietary, or private information for which special protection from public disclosure and from use for any purpose other than prosecuting this litigation may be warranted. Accordingly, the Parties hereby stipulate to and petition the Court to enter the following Stipulated Protective Order (the “Order”). The Parties acknowledge that this Order does not confer blanket protections on all

1 disclosures or responses to discovery and that the protection it affords from public disclosure and use
2 extends only to the limited information or items that are entitled to confidential treatment under the
3 applicable legal principles.

4 2. DEFINITIONS

5 2.1 Attorneys' Eyes Only Information or Items: information that qualifies for protection
6 under Federal Rule of Civil Procedure 26(c) and is of such a type or classification that a party
7 believes the mere disclosure of the information would cause substantial competitive harm. All
8 documents and information so designated and all copies thereof (collectively, "Attorneys' Eyes Only
9 Information") shall be treated as highly confidential and shall not be disclosed except as provided in
10 the Order.

12 2.2 Challenging Party: a Party or Non-Party that challenges the designation of
13 information or items under this Order.

14 2.3 "CONFIDENTIAL" Information or Items: information that qualifies for protection
15 under Federal Rule of Civil Procedure 26(c) including trade secrets, know-how, proprietary data,
16 marketing information, contracts, financial information, security information, surveillance
17 information and/or similar commercially sensitive business information or data which the designating
18 party in good faith believes in fact is confidential or that unprotected disclosures might result in
19 economic or competitive injury, and which is not publicly known and cannot be ascertained from an
20 inspection of publicly available documents, materials or devices. This includes compilations of
21 publicly available discovery materials, which would not be known publicly in a compiled form.
22 "CONFIDENTIAL" Information or Items also includes highly personal or sensitive facts and
23 personal identity information to the extent such facts and information are not a matter of public record
24 or in the public domain.

26 2.4 Counsel (without qualifier): Outside Counsel of Record and House Counsel (as well
27 as their support staff).

1 2.5 Designating Party: a Party or Non-Party that designates information or items that it
2 produces in disclosures or in responses to discovery as "CONFIDENTIAL" or "ATTORNEYS'
3 EYES ONLY."

4 2.6 Disclosure or Discovery Material: all information or items, regardless of the medium
5 or manner in which they are generated, stored, or maintained (including, among other things,
6 testimony, transcripts, and tangible things), that are produced or generated in disclosures or responses
7 to discovery in this matter.

8 2.7 Expert: a person with specialized knowledge or experience in a matter pertinent to the
9 litigation who has been retained by a Party or its counsel to serve as an expert witness or as a
10 consultant in this action.

11 2.8 House Counsel: attorneys who are employees of a Party to this action. House Counsel
12 does not include Outside Counsel of Record or any other outside counsel.

13 2.9 Non-Party: any natural person, partnership, corporation, association, or other legal
14 entity not named as a Party to this action.

15 2.10 Outside Counsel of Record: attorneys who are not employees of a Party to this action
16 but are retained to represent or advise a Party to this action and have appeared in this action on behalf
17 of that Party or are affiliated with a law firm which has appeared on behalf of that party.

18 2.11 Party: any Party to this action, including all of its officers and directors.

19 2.12 Producing Party: a Party or Non-Party that produces Disclosure or Discovery Material
20 in this action.

21 2.13 Professional Vendors: persons or entities that provide litigation support services (e.g.,
22 photocopying, videotaping, translating, preparing exhibits or demonstrations, and organizing, storing,
23 or retrieving data in any form or medium) and their employees and subcontractors.

24 2.14 Protected Material: any Disclosure or Discovery Material that is designated as
25 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY."
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1 2.15 Receiving Party: a Party that receives Disclosure or Discovery Material from a
2 Producing Party.

3 3. SCOPE

4 The protections conferred by this Order cover not only Protected Material (as defined
5 above), but also: (1) any information copied or extracted from Protected Material; (2) all copies,
6 excerpts, summaries, or compilations of Protected Material; and (3) any testimony, conversations,
7 or presentations by Parties or their Counsel that might reveal Protected Material. However, the
8 protections conferred by this Stipulation and Order do not cover the following information: (a) any
9 information that is in the public domain at the time of disclosure to a Receiving Party or becomes
10 part of the public domain after its disclosure to a Receiving Party as a result of publication not
11 involving a violation of this Order, including becoming part of the public record through trial or
12 otherwise; and (b) any information known to the Receiving Party prior to the disclosure or obtained
13 by the Receiving Party after the disclosure from a source who obtained the information lawfully and
14 under no obligation of confidentiality to the Designating Party. Any use of Protected Material at trial
15 shall be governed by a separate agreement or order.

16 4. DURATION

17 Even after final disposition of this litigation, the confidentiality obligations imposed by this
18 Order shall remain in effect until a Designating Party agrees otherwise in writing or a court order
19 otherwise directs. Final disposition shall be deemed to be the later of (1) dismissal of all claims and
20 defenses in this action, with or without prejudice; and (2) final judgment herein after the completion
21 and exhaustion of all appeals, rehearings, remands, trials, or reviews of this action, including the time
22 limits for filing any motions or applications for extension of time pursuant to applicable law.

23 5. DESIGNATING PROTECTED MATERIAL

24 5.1 Exercise of Restraint and Care in Designating Material for Protection. Each Party
25 or Non-Party that designates information or items for protection under this Order must take care to
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1 limit any such designation to specific material that qualifies under the appropriate standards.

2 Mass, indiscriminate, or routinized designations of confidentiality are prohibited.
3 Designations that are shown to be clearly unjustified or that have been made for an improper
4 purpose (e.g., to unnecessarily encumber the case development process or to impose unnecessary
5 expenses and burdens on other parties) may expose the Designating Party to sanctions when and if
6 such sanctions are merited under controlling law.
7

8 If it comes to a Designating Party's attention that information or items that it designated for
9 protection do not qualify for protection, that Designating Party must promptly notify all other Parties
10 that it is withdrawing the mistaken designation.
11

12 5.2 Manner and Timing of Designations. Except as otherwise provided in this Order, or
13 as otherwise stipulated or ordered, Disclosure or Discovery Material that qualifies for protection
14 under this Order must be clearly so designated before the material is disclosed or produced.
15

16 Designation in conformity with this Order requires:
17

18 (a) for information in documentary form (e.g., paper or electronic documents,
19 but excluding transcripts of depositions or other pretrial or trial proceedings), that the Producing
Party affix the legend "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" to each page that
contains protected material.
20

21 A Party or Non-Party that makes original documents or materials available for inspection
22 need not designate them for protection until after the inspecting Party has indicated which material it
23 would like copied and produced. During the inspection and before the designation, all of the material
24 made available for inspection may be deemed "CONFIDENTIAL" or "ATTORNEYS' EYES
ONLY" at the discretion of the Producing Party. After the inspecting Party has identified the
25 documents it wants copied and produced, the Producing Party must determine which documents
26 qualify for protection under this Order. Then, before producing the specified documents, the
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1 Producing Party must affix the "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" legend to
2 each page that contains Protected Material.

3 (b) for testimony given in deposition or in other pretrial or trial proceedings, that the
4 Designating Party identify on the record, before the close of the deposition, hearing, or other
5 proceeding, all protected testimony; or, before the close of the deposition, hearing, or other
6 proceeding, the Designating Party may invoke on the record a right to identify protected testimony
7 within 21 days of receiving a transcript of the deposition, hearing, or other proceeding. During the
8 deposition, hearing, or other proceeding and before the designation, all of testimony shall be deemed
9 "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY."

10 (c) for information produced in some form other than documentary and for any other
11 tangible items, that the Producing Party affix in a prominent place on the exterior of the container or
12 containers in which the information or item is stored the legend "CONFIDENTIAL" or
13 "ATTORNEYS' EYES ONLY." If only a portion or portions of the information or item warrant
14 protection, the Producing Party, to the extent practicable, shall identify the protected portion(s).

15 5.3 Inadvertent Failures to Designate. If timely corrected, an inadvertent failure to
16 designate qualified information or items does not, standing alone, waive the Designating Party's
17 right to secure protection under this Order for such material. Upon timely correction of a
18 designation, the Receiving Party must make reasonable efforts to assure that the material is treated in
19 accordance with the provisions of this Order. However, no Party shall be found to have violated this
20 Order for failing to maintain the confidentiality of material during a time when that material has not
21 been designated as CONFIDENTIAL or ATTORNEYS' EYES ONLY, even when the failure to so
22 designate was inadvertent and where the material is subsequently designated as CONFIDENTIAL or
23 ATTORNEY'S EYES ONLY.

24 6. CHALLENGING CONFIDENTIALITY DESIGNATIONS

25 6.1 Timing of Challenges. Any Party or Non-Party may challenge a designation of

1 confidentiality at any time. A Party or Non-Party shall not be obligated to challenge the propriety of
2 a designation of confidentiality at the time made, and failure to do so shall not preclude a subsequent
3 challenge thereto at any time during the course of this litigation.

4 6.2 Meet and Confer. The Challenging Party shall initiate the dispute resolution process
5 by providing written notice of each designation it is challenging and describing the basis for each
6 challenge. To avoid ambiguity as to whether a challenge has been made, the written notice must
7 recite that the challenge to confidentiality is being made in accordance with this specific paragraph
8 of the Protective Order. The Parties shall attempt to resolve each challenge in good faith and must
9 begin the process by conferring directly (in voice to voice dialogue; other forms of communication
10 are not sufficient) within 14 days of the date of service of notice. In conferring, the Challenging
11 Party must explain the basis for its belief that the confidentiality designation was not proper and
12 must give the Designating Party an opportunity to review the designated material, to reconsider the
13 circumstances, and, if no change in designation is offered, to explain the basis for the chosen
14 designation. A Challenging Party may proceed to the next stage of the challenge process only if it
15 has engaged in this meet and confer process first or establishes that the Designating Party is
16 unwilling to participate in the meet and confer process in a timely manner.
17

18 6.3 Judicial Intervention. If the Parties cannot resolve a challenge without Court
19 intervention, the Challenging Party shall file and serve a motion to remove confidentiality within 21
20 days of the Parties' meet and confer, in the event it is unsuccessful. Any motion brought pursuant to
21 this provision must be accompanied by a competent declaration affirming that the movant has
22 complied with the meet and confer requirements imposed by the preceding paragraph.
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24 The burden of persuasion in any such challenge proceeding shall be on the Designating
25 Party. Frivolous motions, and those made for an improper purpose (e.g., to harass or impose
26 unnecessary expenses and burdens on other Parties) may expose the moving Party to sanctions when
27 and if such sanctions are merited under controlling law. All Parties shall continue to afford the
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1 material in question the level of protection to which it is entitled under the Designating Party's
2 designation until the Court rules on the challenge.

3 7. ACCESS TO AND USE OF PROTECTED MATERIAL

4 7.1 Basic Principles. A Receiving Party may use Protected Material that is disclosed or
5 produced by another Party or by a Non-Party in connection with this case only for prosecuting,
6 defending, or attempting to settle this litigation. Such Protected Material may be disclosed only to
7 the categories of persons and under the conditions described in this Order. When the litigation has
8 been terminated, a Receiving Party must comply with the provisions of section 13 below.

9
10 Protected Material must be stored and maintained by a Receiving Party at a location and in a
11 secure manner that ensures that access is limited to the persons authorized under this Order. This
12 Order does not affect or limit the Designating Party's right or ability to handle its own Protected
13 Materials in whatever manner it chooses in connection with use in its business or otherwise, subject
14 only to the potential waiver of any Confidentiality designations.

15 7.2 Disclosure of "CONFIDENTIAL" Information or Items. Unless otherwise ordered
16 by the Court or permitted in writing by the Designating Party, a Receiving Party may disclose any
17 information or item designated "CONFIDENTIAL" only to:

18 (a) Outside Counsel of Record to whom it is reasonably necessary to disclose
19 the information for this litigation;

20 (b) the officers, directors, and employees (including House Counsel) of the
21 Receiving Party to whom disclosure is reasonably necessary for this litigation and who have
22 signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

23 (c) Experts (as defined in this Order) of the Receiving Party to whom
24 disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment
25 and Agreement to Be Bound" (Exhibit A);

26 (d) the Court and its personnel;

(e) Court reporters and their staff, professional jury or trial consultants, mock jurors, and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(f) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the Court reporter and may not be disclosed to anyone except as permitted under this Order;

(g) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(h) An individual named Plaintiff, with disclosure only to the extent reasonably necessary for the named Plaintiff's participation in the case as determined in good faith by Plaintiff's counsel, provided the named Plaintiff has signed the "Acknowledgement and Agreement to Be Bound" (Exhibit A); and

(i) Other persons only by written consent of the Designating Party or upon order of the Court and on such conditions as may be agreed or ordered.

7.3 Disclosure of "ATTORNEYS' EYES ONLY" Information or Items. Unless otherwise ordered by the Court or permitted in writing by the Designating Party, a Receiving Party may only disclose information or items designated "ATTORNEYS EYES ONLY" to:

(a) Attorneys (including staff and other law firm personnel) representing the Parties in this litigation;

(b) Experts (as defined in this Order) of the Receiving Party to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(c) the Court and its personnel;

(d) Court reporters and their staff present in their official capacity any at hearing, deposition, or other proceeding in the litigation and Professional Vendors to whom disclosure is reasonably necessary for this litigation and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A);

(e) during their depositions, witnesses in the action to whom disclosure is reasonably necessary and who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A), unless otherwise agreed by the Designating Party or ordered by the Court. Pages of transcribed deposition testimony or exhibits to depositions that reveal Protected Material must be separately bound by the Court reporter and may not be disclosed to anyone except as permitted under this Order;

(f) the author or recipient of a document containing the information or a custodian or other person who otherwise possessed or knew the information who have signed the "Acknowledgment and Agreement to Be Bound" (Exhibit A); and

(g) Other persons only by written consent of the Designating Party or upon order of the Court and on such conditions as may be agreed or ordered.

8. PROTECTED MATERIAL SUBPOENAED OR ORDERED PRODUCED IN OTHER LITIGATION

If a Party is served with a subpoena or a court order issued in other litigation that compels disclosure of any information or items designated in this action as "CONFIDENTIAL" or "ATTORNEYS EYES ONLY," that Party must:

(a) promptly notify in writing the Designating Party. Such notification shall include a copy of the subpoena or court order:

(b) promptly notify in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is subject to this Protective Order. Such notification shall include a copy of this Order; and

(c) cooperate with respect to all reasonable procedures sought to be pursued by the Designating Party whose Protected Material may be affected.

If the Designating Party timely seeks a protective order, the Party served with the subpoena or court order shall not produce any information designated in this action as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY" before a determination by the court from which the subpoena or order issued, unless the Party has obtained the Designating Party's permission. The Designating Party shall bear the burden and expense of seeking protection in that court of its confidential material – and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party or a Designating Party in this action to disobey a lawful directive from another court.

9. A NON-PARTY'S PROTECTED MATERIAL SOUGHT TO BE PRODUCED IN THIS LITIGATION

The terms of this Order are applicable to information produced by a Non-Party in this action and designated as "CONFIDENTIAL" or "ATTORNEYS' EYES ONLY." Such information produced by Non-Parties in connection with this litigation is protected by the remedies and relief provided by this Order. Nothing in these provisions should be construed as prohibiting a Non-Party from seeking additional protections from the Court.

10. UNAUTHORIZED DISCLOSURE OF PROTECTED MATERIAL

If a Receiving Party learns that, by inadvertence or otherwise, it has disclosed Protected Material to any person or in any circumstance not authorized under this Order, the Receiving Party must immediately (a) notify in writing the Designating Party of the unauthorized disclosures, (b) use its best efforts to retrieve all unauthorized copies of the Protected Material, (c) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (d) request such person or persons to execute the "Acknowledgment and Agreement to Be Bound" (Exhibit A).

1 11. INADVERTENT PRODUCTION OF PRIVILEGED OR OTHERWISE
 2 PROTECTED MATERIAL

3 When a Producing Party gives notice to Receiving Parties that certain inadvertently produced
 4 material is subject to a claim of privilege or other protection, the obligations of the Receiving Parties
 5 are those set forth in Federal Rule of Civil Procedure 26(b)(5)(B). This provision is not intended to
 6 modify whatever procedure may be established in an e-discovery order that provides for production
 7 without prior privilege review. Pursuant to Federal Rule of Evidence 502(d) and (e), the Parties
 8 agree that the inadvertent disclosure of material, information, or communication covered by the
 9 attorney-client privilege, work product doctrine, or other valid privilege or immunity is not, by itself,
 10 a waiver of any potential protection in this or any other Federal or State proceeding. However,
 11 nothing herein restricts the right of the Receiving Party to challenge the Producing Party's claim of
 12 privilege if appropriate within a reasonable time after receiving notice of the inadvertent or mistaken
 13 disclosure.

14 12. MISCELLANEOUS

15 12.1 Right to Further Relief. Nothing in this Order abridges the right of any person or
 16 entity to seek its modification by the Court in the future.

17 12.2 No Greater Protection of Specific Documents. No Party or Non-Party may
 18 withhold information from discovery on the ground that it requires protection greater than that
 19 afforded by this Order unless the Party or Non-Party moves for an order providing such special
 20 protection.

21 12.3 Right to Assert Other Objections. By stipulating to the entry of this Protective
 22 Order no Party waives any right it otherwise would have to object to disclosing or producing any
 23 information or item on any ground not addressed in this Order. Similarly, no Party waives any right to
 24 object on any ground to the use in evidence of any of the material covered by this Order.

25 12.4 Filing Protected Material. Without written permission from the Designating Party
 26 or a court order secured after appropriate notice to all interested persons, a Party may not file in the

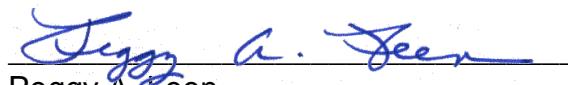
1 public record in this action any Protected Material. A Party that seeks to file under seal any Protected
2 Material must comply with Civil Local Rule 10-5. Protected Material may only be filed under seal
3 pursuant to a court order authorizing the sealing of the specific Protected Material at issue.

4 13. FINAL DISPOSITION

5 Within 60 days after the final disposition of this action, as defined in Section 4 above, upon
6 the written request of the Designating Party, each Receiving Party must return all Protected Material
7 to the Producing Party or destroy such material. As used in this subdivision, "all Protected Material"
8 includes all copies, abstracts, compilations, summaries, and any other format reproducing or
9 capturing any of the Protected Material. Notwithstanding this provision, Counsel are entitled to
10 retain an archival copy of all pleadings, motion papers, trial, deposition, and hearing transcripts,
11 legal memoranda, correspondence, deposition and trial exhibits, expert reports, attorney work
12 product, and consultant and expert work product, even if such materials contain Protected Material.
13 Any such archival copies that contain or constitute Protected Material remain subject to this
14 Protective Order as set forth in Section 4.

15 IT IS SO STIPULATED.

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22 IT IS SO ORDERED this 29th day
23 of January, 2014.

24 
25 Peggy A. Leen
26 United States Magistrate Judge
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2 Dated: January 27, 2014
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EXHIBIT A

ACKNOWLEDGMENT AND AGREEMENT TO BE BOUND

I, _____ [print or type full name], of _____ [print or type full address], declare under penalty of perjury that I have read in its entirety and understand the First Amended Stipulated Protective Order ("Protective Order") that was issued by the United States District Court for the District of Nevada on _____ [date] in the case of *Kristensen v. Credit Payment Services, Inc.*, Case No. 2:12-CV-00528-KJD (PAL). I agree to comply with and to be bound by all the terms of the Protective Order and I understand and acknowledge that failure to so comply could expose me to sanctions and punishment in the nature of contempt. I solemnly promise that I will not disclose in any manner any information or item that is subject to the Protective Order to any person or entity except in strict compliance with the provisions of the Order.

I further agree to submit to the jurisdiction of the United States District Court for the District of Nevada for the purpose of enforcing the terms of the Protective Order, even if such enforcement proceedings occur after termination of this action.

Date:

City and State where sworn and signed: _____

Printed name:

Signature: _____